identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: FEB 17 2012 OFFICE: NEBRASKA SERVICE CENTER [redacted]

IN RE: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an aviation manager [redacted] Missouri. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and supporting exhibits.

In this decision, the term "prior counsel" shall refer to [redacted] who represented the petitioner at the time the petitioner filed the petition. The term "counsel" shall refer to the present attorney of record.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise.

. . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989). Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), set forth several factors to consider when evaluating a request for a national interest waiver. The petitioner must first show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on August 6, 2010. On that form, the petitioner stated that she is "[r]esponsible for safety, security, facilities management and operations at Kansas City International Airport." More details about the occupation appear in the official "Job Class Specification" from the City of Kansas City, the "Summary" portion of which reads, in part:

> Work involves the responsibility for the efficient and economical completion of assigned responsibilities in any area of airport operations and maintenance and department management such as, physical plant, transport systems, planning, development, operations or maintenance.

The job description lists 15 "Duties and Responsibilities," the first of which reads: "Manages assigned program(s), project(s) and personnel; prepares work schedules, determines work methods and equipment required, and assigns staff to work crews." Most of the specified duties concerned logistical functions such as maintenance, construction, and personnel. The sixth, seventh, eleventh and twelfth duties and responsibilities concerned safety, as follows:

- ✓ Assumes responsibility for airport safety programs and ensures that runways, taxiways and field conditions permit safe operation of aircraft and motor vehicles, and coordinates activities with crash-rescue staff.
- ✓ Assumes operational control of airport during emergencies and coordinates all necessary activities and agencies to eliminate emergency situations and return airport to normal operations. . . .
- ✓ Supervises airport safety activities, runway lights and signals and motor equipment operating on the field; ensures that landing strips, adjacent grounds and field conditions are satisfactory for the safe operation of aircraft, mobile vehicles and the traveling public.
- ✓ Supervises the inspection of airfield and airfield facilities for the presence of any hazardous conditions and takes required corrective action.

In an accompanying introductory statement, prior counsel stated: "One of [the petitioner's] major responsibilities as Aviation Manager is the Airport's Emergency Plan and as the enforcer of the plan, [the petitioner] is exposed to sensitive information pertaining to public safety and expected to take appropriate action." Assertions about the inherent nature of the position can establish the intrinsic merit and national scope of the occupation, but there exists no blanket waiver for aviation managers. Therefore, the petitioner must establish that her past accomplishments set her apart from others in the occupation and demonstrate some degree of influence over the field. To meet this threshold, prior counsel stated:

> [The petitioner] is one of the few Aviation Managers in the country at [her] level of education, knowledge and experience.
>
> She is one of the very few who have a masters degree in aviation management . . . , and also one of the few with certification from Dynatest regarding friction testing certification. . . .
>
> The position of Aviation Manager is extremely difficult to fill with people at the level of [the petitioner]. . . .
>
> Undoubtedly, [the petitioner's] work is important. However, it is the true level of her abilities and credentials which set her apart.

(Evidentiary citation omitted). Several witness letters accompanied the initial filing. Many of these witness letters focused on the intrinsic importance of the role of aviation managers. For example, the petitioner's supervisor, [redacted], manager of operations at [redacted] stated:

> The position of Aviation Manager is a position of extreme responsibility. . . . The safety of the flying public and all airport users is directly dependent on upon the Aviation Manager making sound decisions in [emergency] situations. . . .
>
> It is extremely difficult to find people that have the education and key experience needed to make them successful in this job, as few have the required education or training to perform.

Such general assertions do not distinguish the petitioner from other qualified aviation managers in any quantifiable way. More important for the purposes of this proceeding are statements that set the petitioner apart from other qualified professionals in her field.

[redacted] stated:

> [The petitioner's] unique performance, abilities and education set her apart from others in her field. For example, [the petitioner] has distinguished herself, by keeping abreast with industry trends and being a member of the prestigious American Association of Airport Executives (AAAE) organization, where she is a candidate in its accreditation program, with two (2) phases remaining to attain accreditation. She has attended both the Basic and Advanced training in Airport Safety and Operations Specialist School offered by the (AAAE). She also serves on three committees for this organization: The Transportation Security Services, General Aviation and The Operations Safety and Planning committees.

[redacted] stated:

> I met [the petitioner] in January of 2010 when I went to Kansas City International Airport to deliver the Dynatest 6875 Runway Friction Tester (RFT). . . .
>
> During my interactions with [the petitioner], it was clear that she was already highly knowledgeable and familiar with friction testing devices and the conditions for testing. . . . As an Aviation Manager, this is one of her specific duties – to conduct runway coefficient of friction testing for safe aircraft takeoffs and landings, during inclement weather operations, and for performing rubber build up assessment at Kansas City International airport. At a major international airport, it is extremely important for the safety of the travelers to have highly knowledgeable individuals like [the petitioner] performing such testing, otherwise, the technical outcome of the measurements may be compromised and affect the safety of aircraft.

The petitioner submitted documentation of the petitioner's education and training and various other background materials. News stories reported emergency landings at [redacted] on consecutive days in June 2010. Prior counsel claimed that the petitioner, "in her role of Aviation Manager, handled the

safety and security aspects of these operations." The articles do not mention the petitioner or specify what role she played in the aftermath of the incidents. One article included a photograph showing several people near one of the aircraft, and a handwritten note indicates that the petitioner is one of those individuals, but no one is identifiable in the image. None of the witnesses (including [redacted] officials) mentioned the incidents or the petitioner's role therein; most of the letters date from late April or early May 2010, before the incidents occurred.

On September 28, 2010, the director issued a request for evidence (RFE), stating:

> While the record does demonstrate that the alien petitioner is an accomplished Aviation Manager, the documentation is not sufficient to demonstrate that her abilities are greater in some capacity [than those of] the majority of her peers.
>
> In addition, the record indicates that managers of this sort are in "short supply." A shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver.

In response to the RFE, the petitioner submitted two additional witness letters. [redacted], a senior program officer with the Airport Cooperative Research Program of the Transportation Research Board (TRB), stated:

> I am responsible for putting together industry expert panels that scope and oversee applied research to help airports find near-term solutions to problems that they are experiencing. I then facilitate the dialogue between the expert panels and the contract research team. . . .
>
> [The petitioner] is certainly considered one of the most qualified and trained Aviation Managers in the country. She is one of a select few of Aviation Managers with a Master's degree in Aviation Management. . . .
>
> The attainment of the Master's degree provides [the petitioner] a more in-depth and specialized knowledge of issues relating to aviation safety and security. . . .
>
> [I]n her current position at the [redacted] [the petitioner] has undertaken the following duties, which are well beyond the scope of most Aviation Managers:
>
> | | |
> |---|---|
> | Airport Operations Safety: | Coordinator for the FAA required Emergency Tabletop Exercise. |
> | Airspace Navigational Safety: | Update and submit critical airport information for the national Airport Facility Directory A/FD. |
> | Technical writing: | Perform technical writing for the Airport Emergency Plan. |

> I am aware that [the petitioner] has certifications from Dynatest (regarding friction testing of runways) and FEMA (regarding emergency management). The level of knowledge required to obtain these certificates does further differentiate [the petitioner] from many of her peers.

As previously noted, the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given field. Academic degrees and professional certifications are components of a claim of exceptional ability. *See* 8 C.F.R. §§ 204.5(k)(3)(ii)(A) and (C). The plain language of the statute makes it clear that aliens of exceptional ability are, as a rule, subject to the job offer requirement. Putting these various provisions together, it is evident that the petitioner cannot establish eligibility for the national interest waiver simply by showing that she possesses degrees and certifications that most in her field do not possess. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. 221.

[redacted] continued:

> Lastly, [the petitioner] is so well regarded as an Aviation Manager that she was nominated and selected to serve on the Transportation Research Board's Airport Cooperative Research Program Workshop on Airport Operations, to identify issues that could benefit from research conducted by the Airport Cooperative Research Program, in Washington DC. Only 12 aviation professionals were selected and invited to participate. . . .
>
> [The petitioner] actively contributed to the workshop by identifying airport operations issues that can be solved by research. Her influence in applied research and best management practices for airport operational safety and other issues was invaluable to the identification of issues in the workshop. The end result was a list of potential issues of which one will be researched for this Fiscal Year (2011) and the rest will be evaluated for the Fiscal Year 2012 program.

[redacted] did not state how many aviation managers were nominated to participate in the workshop, what criteria the FRB used in selecting the participants, or the number of such panels that the FRB convenes in a given year. [redacted] did not indicate that the workshop resulted in anything other than "a list of potential issues" for future research.

[redacted] stated:

> [The petitioner's] enhanced roles as compared to other aviation managers are due to her proven superior qualifications, demonstrated knowledge and abilities, as compared to her peers. . . . [H]er qualifications are indeed significantly greater in some capacity to the majority of her peers. Consequently, she is able to lead and

complete specialized assignments that impact the nation's aviation system as a whole. Such assignments include:

- ✓ Technical writing of the Airport Emergency Plan – a critical and comprehensive FAA required document. . . . This includes aircraft accident and emergencies, natural disasters, bomb threats, hazardous materials procedures, due to her education and training, as well as her FEMA certifications. . . .
- ✓ Completion of the FAA required Emergency Tabletop Exercise – a multi-jurisdictional/multi-agency training exercise. . . .
- ✓ Ongoing Runway Friction Testing – a critical test of paved runway surfaces at the airport. This is a specialized skill that [the petitioner] is certified in. Not many Aviation Managers have this certification. . . . With the winter season upon us, it would be very difficult and costly to get another certified Aviation Man[a]ger to perform this safety critical function.
- ✓ Selection to serve on the TRB project – being an accomplished Aviation Manager with her specialized education, training, background and abilities has led to [the petitioner's] selection to serve on the TRB project. In my opinion, this shows that she is able and has served the national interest to a substantially greater extent than the majority of her peers, as only 12 aviation professionals were selected in the nation, for this prestigious honor.
- ✓ . . . [The petitioner] is slated to continue the project with the TRB in Washington DC the work week of December 13, 2010. . . . Invitation to serve on an Aviation panel and to work with such a distinguished organization as the TRB is a significant accomplishment. . . .

  Here is an overview of what [the petitioner] is expected to be engaged in for this project for the next 20 months (anticipated project timeline):

  - o Develop the scope of task for Aviation Research as it relates to Airport Operations
  - o Oversee work in Request for Proposals (RFPs)
  - o Panel meeting (schedule for March 2011)
  - o Review Submitted Proposals
  - o Meet with the research team throughout the process
  - o Answer technical questions posed at the Panel
  - o Provide technical guidance for the contracted aviation research project
  - o Provide to the TRB a Draft, Interim and Final Report for the project.

[redacted] did not explain how the petitioner's participation in "FAA required" activities sets her apart from other aviation managers, who are presumably subject to the same FAA requirements as the petitioner.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing

cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The witness letters do not establish that the petitioner has been an especially influential figure in her field. The AAO notes the petitioner's participation on TRB panels, which produce recommendation for national implementation, but these results are the inherent goal and purpose of those panels. The record does not contain sufficient information about the panels to establish that the petitioner's very participation is, itself, a hallmark of the impact of her efforts.

The director denied the petition on January 21, 2011. The director acknowledged the intrinsic merit and national scope of the occupation, but stated that the witness letters "do not overcome the lack of documentary evidence that the beneficiary's work has made an impact in the field." The director repeated the assertion that a shortage of qualified workers would make the position more, not less, amenable to labor certification.

On appeal, the petitioner submits several new exhibits. Counsel asserts that this "documentation is sufficient to demonstrate that [the petitioner's] abilities in the field of Aviation Management are greater than the majority of her peers. This documentation also proves that [the petitioner's] work as an Aviation Manager has made a substantial impact in her field." The first quoted sentence is quite similar to the regulatory definition of "exceptional ability" which, as explained, is not sufficient to establish eligibility for the waiver.

The petitioner submits documentation showing that the Florida Department of Transportation named two Jacksonville airports "Florida General Aviation Airport of the Year" – Craig Airport in 2003 and Cecil Field in 2006 – while the petitioner was an aviation manager in Jacksonville. The implication is that the petitioner was responsible for these awards, but the documentation does not name the petitioner or show to what extent the awards rested on her work. Press releases from airport authorities mention various projects which the petitioner or counsel have highlighted in blue ink and claimed as the petitioner's projects.

Even if the petitioner's work was responsible for the honors earned by the two Jacksonville airports, the evidence does not show that the petitioner had lasting or widespread impact on her profession. The record, for example, does not show that other airports have adopted methods or practices that the petitioner developed.

The petitioner documented her involvement in additional TRB panels. The TRB did not invite the petitioner to participate until after the petition's August 2010 filing date; the invitation letters are from September and November of that year. Even if the petitioner had shown its significance, it could not retroactively establish eligibility as of the petition's filing date. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The petitioner submitted no evidence of the criteria by which the TRB selects its panelists.

The remaining exhibits submitted on appeal concern the petitioner's academic and vocational training. These materials establish her credentials as an aviation manager, which the director had not questioned. As previously explained, elements that would support a claim of exceptional ability (including academic degrees and professional certification) cannot suffice to exempt the petitioner from a requirement that normally applies to aliens of exceptional ability.

The materials submitted with the petition and on appeal serve to demonstrate that the petitioner is a well-trained professional who has been active in her field. These materials do not, as claimed, self-evidently show that the petitioner has been an especially influential figure in that field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.